

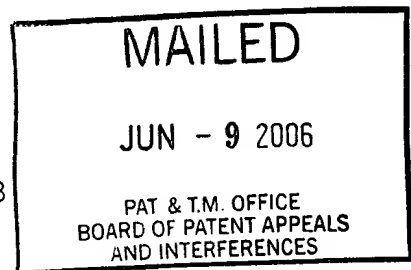
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KIL YONG SUNG

Appeal No. 2006-0081
Application No. 09/716,573



ON BRIEF

Before FRANKFORT, BAHR, and LEVY, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 16 through 19, all of the claims remaining in the application. Claims 1 through 15 have been cancelled.

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As noted on page 1 of the specification, appellant's invention relates to a utility lighter which contains a safety feature wherein normal operation of the lighter through depression of a trigger is impeded by the safety feature. As depicted in the sole figure of drawings accompanying the application, the safety feature includes a spring cam mechanism (60, 70, 80, 90) and a safety button (120) wherein operation of both the safety button and the trigger (100) are necessary to produce a flame. Each of claims 16 through 19 on appeal is independent and thus may be said to be representative of the subject matter on appeal. A copy of appealed claims 16 through 19 can be found in the Appendix attached to appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Bruhn	4,610,624	Sep. 9, 1986
Tasi	5,531,592	Jul. 2, 1996
Huang	6,050,810	Apr. 18, 2000 (filed Mar. 22, 1999)

Claims 16 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Tasi.

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Claim 19 stands rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Tasi.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tasi in view of Bruhn.

Claims 16 through 19 additionally stand rejected under 35 U.S.C. § 102(e) as being anticipated by Huang.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the answer (mailed November 1, 2004) for the examiner's reasoning in support of the rejections, and to appellant's brief (filed August 3, 2004) and reply brief (filed January 3, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to

the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

We turn first to the examiner's rejection of claims 16 and 17 under 35 U.S.C. § 102(b) based on Tasi. Like the examiner, it appears to us that Tasi discloses a gas torch or lighter comprising a lighter housing (1, 4, 5); a fuel tank formed as part of the "regular disposable cigarette lighter" used therein (col. 1, lines 5-7), which fuel tank is located within the housing; a piezoelectric unit (21) for creating a spark; and a trigger (22) slidably mounted in the lighter housing for activating the piezoelectric unit (21), the trigger having a stopper flange or tab (221). The torch or lighter of Tasi further includes a fuel-release valve which is spring loaded so as to be urged into a closed position (formed as part of the conventional cigarette lighter); a spring mechanism (34, 35) having a non-operational position, an operational position, a first portion (top end of pressure rod 34), a second portion (bottom flared end of rod 34), wherein the first portion locks the trigger when the spring mechanism is in the non-operational position (Fig. 2), the second portion opens the fuel-release

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valve when the spring mechanism is in the operational position, the spring mechanism being urged into the non-operational position by the coil spring (35); and a safety button (36) for moving the spring mechanism (34, 35) from the non-operational position to the operational position by moving the first portion of the spring mechanism out of interference with the trigger to allow depression of the trigger and activation of the piezoelectric unit.

Appellant contends that the claims on appeal clearly require the structure of the spring mechanism to be such that the fuel-release valve "can only remain open as long as the safety button is depressed by a finger" (brief, page 9 and reply brief, page 4), and urges that this requirement differentiates the claimed lighter from that of Tasi, especially since the examiner has not pointed out exactly where in Tasi there is disclosure that the fuel-release valve is urged into a closed position by a spring.

As for the contention that the fuel-release valve of the present invention can only remain open as long as the safety button is depressed by a finger, we find from a review of appellant's drawing figure and the specification at page 9, lines

1-17 that appellant's own disclosure belies this argument. Assuming that the safety button (120) of appellant's invention is depressed to an extent adequate to release sufficient fuel to allow a flame to be generated by a spark resulting from activation of the released trigger (100) and that the trigger remains activated (i.e, moved to the right as seen in the drawing figure with the cam lever (80) contacting the lower surface of the trigger stop tab (110)), it appears that when the safety button (120) is released, the fuel-release valve will remain open at least to a limited extent (see, specification, page 9, lines 1-17) since the cam lever (80) will still be located under the trigger stop tab portion (110) and displaced from its trigger lock position seen in the drawing figure, with the fuel-release lever (70) thereby also being slightly displaced from a position where the fuel-release valve would be allowed to close.

Concerning the argument that the examiner has not pointed out exactly where in Tasi there is disclosure that the fuel-release valve is urged into a closed position by a spring, we note pages 8-9 of the answer wherein the examiner has explained why this aspect of the claimed subject matter is necessarily included in the commercially available regular cigarette lighter

used in the Tasi gas torch or lighter. We also note that appellant has not disputed the examiner's position as set forth in the answer, except to again assert in the reply brief (pages 6-7) that Tasi itself does not expressly disclose or describe this feature. Appellant has presented no argument as to why the commercially available regular cigarette lighter discussed in Tasi would not necessarily include a fuel-release valve that is urged into a closed position by a spring as the examiner has indicated. Thus, finding no convincing argument to the contrary and since we consider that the examiner's position is reasonable on its face, we are constrained to agree with the examiner.

Contrary to appellant's arguments in the reply brief (pages 4-5), we find that Tasi discloses a safety button like that claimed by appellant, i.e., a safety button "for moving the spring mechanism from the nonoperational position to the operational position" (claim 16), and a safety button "for moving said spring mechanism from said non-operational position to said operational position by moving said first portion of the spring mechanism out of interference with said trigger to allow depression of said trigger and activation of said piezoelectric unit" (claim 17). Moreover, we direct appellant's attention to

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the disclosure at column 3, lines 8-16, of Tasi and column 2, lines 27-30 which further refute appellant's assertions concerning Tasi's torch/lighter.

In view of the foregoing, we will sustain the examiner's rejection of claims 16 and 17 under 35 U.S.C. 102(b) as being anticipated by Tasi.

Independent claim 19 differs from independent claims 16 and 17 discussed above, in that it requires a safety button for "rotationally moving" the spring mechanism from its non-operational position to its operational position. The examiner's rejection of this claim under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Tasi is not well founded, and therefore will not be sustained.

Like appellant (brief, page 13 and reply brief, pages 7-8), we find no reasonable basis to conclude that the safety button (36) of Tasi would rotationally move the spring mechanism therein from its non-operational position to its operational position as set forth in claim 19 on appeal. Since the pressure rod (34)

goes through a hole (361) in the slide switch or safety button (36) and is held in place by a clamp (col. 2, lines 23-24), it appears clear that it can only move vertically downward due to an external force applied to the safety button/slide switch (36) and that it is subsequently biased vertically upward by the spring (35) acting on the slide switch or safety button (36) once the external force is removed. Any incidental torsional movement of the coil spring (35) of Tasi's lighter during its vertical compression due to downward movement of the safety button (36) is clearly distinct from that generated by appellant's spring mechanism (60, 70, 80, 90) when it is rotationally moved by downward movement of the safety button (120) to effect movement of the spring mechanism from its non-operational position to its operational position.

Regarding the rejection of claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Tasi in view of Bruhn, we observe that appellant has indicated on page 9 of the reply brief that the examiner has correctly stated that appellant "do[e]s not dispute the teachings of Bruhn, or the fact that Bruhn could theoretically be combinable with Tasi." Instead, appellant relies on the arguments as already discussed above regarding claims 16

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and 17 to distinguish this independent claim from the combination of Tasi and Bruhn. Having found those arguments unpersuasive for the reasons already set forth above, we will sustain the examiner's rejection of claim 18 under 35 U.S.C. § 103(a).

The last of the examiner's rejections for our consideration on appeal is that of claims 16 through 19 under 35 U.S.C. § 102(e) as being anticipated by Huang. In this instance, it appears that appellant has again elected not to challenge the examiner's position, noting in the brief (page 17) and in the reply brief on pages 9-10 that appellant and Huang are claiming "the same patentable invention," and urging that an interference is the proper mechanism to resolve priority of invention. Given appellant's lack of argument, we will summarily sustain the rejection of claims 16 through 19 under 35 U.S.C. § 102(e).

In summary, we note that the rejection of claims 16 and 17 under 35 U.S.C. § 102(b) as being anticipated by Tasi has been sustained, while the rejection of claim 19 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Tasi has not been sustained. In addition, the rejection of claim 18 under 35 U.S.C. § 103(a) as

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being unpatentable over Tasi in view of Bruhn has been sustained. The rejection of claims 16 through 19 under 35 U.S.C. § 102(e) based on Huang has also been sustained. Since at least one rejection of each of the claims on appeal has been sustained, it follows that the decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Charles E. Frankfort
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Administrative Patent Judge)
)
Jennifer D. Bahr
Jennifer D. Bahr) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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